BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KATHY LYNN GABLE	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,017,006
ESPRIT DE FLEUR	)	
Respondent	)	
AND	)	
	)	
STATE FARM FIRE & CASUALTY COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appeals the September 27, 2007 Award of Administrative Law Judge John D. Clark. Claimant was awarded a 15 percent permanent partial disability to the body as a whole on a functional basis. Claimant was denied a work disability under K.S.A. 44-510e after the Administrative Law Judge (ALJ) determined that claimant had voluntarily terminated her employment with respondent in 2004 and could not expect to have a job waiting for her two years later.

Claimant appeared by her attorney, Thomas M. Warner, Jr., of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Dallas L. Rakestraw of Wichita, Kansas.

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Award of the ALJ. Additionally, at oral argument to the Board, the parties stipulated to the 15 percent permanent impairment of function to the whole body determined by the ALJ in the Award. That finding is, therefore, affirmed. The parties also acknowledged that the 64.29 percent task loss opinion of George G. Fluter, M.D., is the only task loss opinion in this record. The Board heard oral argument on January 18, 2008.

ISSUE

What is the nature and extent of claimant's injury and disability? Claimant argues that she is entitled to a permanent partial work disability in excess of her functional

impairment under K.S.A. 44-510e. Respondent argues that claimant should be limited to her functional impairment as claimant voluntarily terminated her employment in 2004 when she got married and relocated to Morland, Kansas, with her new husband. Claimant contends that she was either on temporary total disability compensation (TTD) or under significant restrictions almost the entire time she lived in Morland and, after receiving permanent restrictions, requested a job with respondent, which respondent was not willing to provide. Respondent argues that a job within claimant's restrictions was offered to claimant in January 2006 and claimant refused the offered employment. Therefore, claimant should be limited to her functional impairment and denied a permanent partial work disability under K.S.A. 44-510e.

FINDINGS OF FACT

Claimant began working in respondent's flower shop in September 1995. Her job duties included flower processing, design, store upkeep, displays, processing hard goods and fresh flowers and waiting on customers, both by phone and in person. Claimant's job required that she spend long hours on the phone taking orders. Claimant and Anita Phillips, the owner of the shop, were the only full-time employees of respondent. In early February 2004, claimant advised Ms. Phillips that claimant was getting married and would be leaving respondent's shop and moving to western Kansas with her husband.

Beginning after the Christmas season and continuing through February 2004, claimant began noticing pain in her spine and neck, with the pain traveling between her shoulder blades. This occurred while claimant was taking orders over the phone. Claimant talked to Ms. Phillips about getting a headset for their phone system, but did not immediately seek medical treatment. Claimant thought her condition would go away over the weekend.

Right after Valentine's Day, Ms. Phillips went on vacation. After her return, claimant scheduled an examination with her family physician, Dr. Ray Cook. Dr. Cook treated claimant from February 27 to March 5, 2004. Diagnostic tests were ordered and claimant was referred to Robert L. Eyster, M.D., on March 10, 2004. Dr. Eyster provided claimant conservative care, as did Dr. Randy Henwood.

Claimant was then referred, by respondent, to Paul S. Stein, M.D., a board certified neurological surgeon, for an examination on May 12, 2004, and treatment continuing through (the first period of treatment) July 30, 2004. In May 2004, Dr. Stein provided claimant with temporary restrictions. Dr. Stein diagnosed claimant with myofascial pain syndrome.

Claimant came under the care of neurological surgeon, Gery Hsu, M.D., on August 25, 2004. Dr. Hsu diagnosed a slight disc bulge at C5-6 on the left side. No

surgery was recommended at that time. Claimant did undergo a C5-6 epidural steroid injection and trigger point injections on June 16, 2004, under the care of Dr. Ronald Manasco.

Claimant again came under the care of Dr. Stein on November 9, 2005, and Dr. Hsu on November 10, 2004. On January 17, 2005, Dr. Hsu performed a C5-6 anterior cervical discectomy and fusion with placement of cornerstone machine graft and anterior cervical plating. Post surgery, claimant was diagnosed with degenerative disc disease with severe chronic cervical pain and bilateral radiculopathy. As of May 11, 2005, Dr. Hsu determined that the surgery had provided no relief to claimant's pain.

Claimant was also evaluated by Dr. J. Mark Melhorn, Dr. Ewell Nelson, Dr. Gregory Arends and Dr. Keith Green, with Dr. Green performing cervical facet joint injections at C5-6 and C6-7. Claimant was then referred by her attorney to board certified physical medicine and rehabilitation specialist, George G. Fluter, M.D., for an evaluation on September 11, 2006. Dr. Fluter diagnosed claimant post anterior cervical diskectomy and fusion at C5-6, which he found to be causally related to claimant's work activities. He rated claimant at 15 percent permanent partial impairment to the whole body pursuant to the fourth edition of the AMA *Guides*.[1] He restricted claimant from lifting, carrying, pushing or pulling over 20 pounds occasionally and 10 pounds frequently. Claimant was also to avoid holding her head and neck in awkward or extreme positions and work at or above shoulder level was only to be performed occasionally. Dr. Fluter recommended follow-up care with Dr. Green for pain management.

In early February 2004, before reporting her injuries, claimant had informed Ms. Phillips that she was getting married and would be leaving the business. It was shortly after making this announcement that claimant's pain was reported to respondent. In April 2004, claimant was married. She was still working for respondent at the time. By August 2004, claimant had sold her house and, within 30 days of the sale, had moved to Morland, Kansas, with her new husband.

Work restrictions were assigned by Dr. Stein in November 2005. By December 2005, claimant was provided with new temporary work restrictions by Dr. Stein. These restrictions were provided to respondent, and, on January 9, 2006, an offer of employment was extended to claimant to return to work with respondent on January 16, 2006. Claimant requested more specifics with regard to the offer and was told the job would involve a 40-hour work week at an hourly rate of $14.15 per hour and would be set up within the restrictions provided by claimant's authorized treating physician. After a trade of information, claimant advised respondent she would be unable to accept the offered position as she currently lived in Morland, Kansas, 250 miles from Wichita. Claimant's rejection e-mail from her attorney to respondent's attorney was dated January 23, 2006.

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[1] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

At that time, there was no indication that respondent planned to move her business to Colorado. Unfortunately, on January 31, 2006, claimant's husband filed for divorce.

On May 3, 2006, claimant was released by Dr. Stein with permanent restrictions. Claimant then began looking for work. Over Memorial Day weekend, 2006, respondent relocated her business to Telluride, Colorado. On June 5, 2006, claimant offered to return to work for respondent. This offer was declined by respondent. At the time claimant's attorney sent the June 5 letter, claimant was aware that respondent had moved her business and there was no job in Wichita for her to return to.[2]

At the time of Dr. Stein's release, claimant was no longer with her husband and was living north of Studley, Kansas. Claimant prepared a resume and began looking for work. Claimant looked in local newspapers and on a local telephone service that carried ads for jobs, and registered on Career Builders and Monster.com and with the Kansas Civil Service and Kansas Job Service.

Studley is a town of only 5 people. Claimant lived near Hoxie, Kansas, a town of only 800 people, and Hill City, a town of 800 to 1,000 people. It became clear to claimant that jobs would be limited in those communities. Because of the lack of jobs in those communities, on September 8, 2006, claimant contacted an inbound telemarketing service called West Corporation. Claimant was offered a job and, at the time of the regular hearing, continued working for that employer. Claimant is paid for the time she spends on the telephone, earning 17 cents per minute. This computes to an hourly wage of $10.20. However, claimant can only earn that hourly rate if she stays on the telephone continuously. Claimant continues to look for other jobs, as she only averages about $700.00 per month with West Corporation, even while working 38 to 40 hours per week, and cannot live on that amount of money. Claimant's job search encompasses Hays, Wichita and Denver, Colorado, and includes on-line searches, sending out resumes and newspaper searches. Claimant has expressed a clear willingness to relocate if necessary. On October 13, 2006, claimant relocated to WaKeeney, Kansas. However, this was for living purposes, and not for a job.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.[3]

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[2] R.H. Trans. at 31.

[3] K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[4]

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[5]

In determining what, if any, wage loss claimant has suffered, the statute must be read in light of both *Foulk*[6] and *Copeland*.[7] In *Foulk*, the Kansas Court of Appeals held that a worker could not avoid the presumption against work disability as contained in K.S.A. 1988 Supp. 44-510e (the predecessor to the above quoted statute) by refusing an accommodated job that paid a comparable wage. In *Copeland*, the Kansas Court of Appeals held, for the purposes of the wage-loss prong of K.S.A. 44-510e (Furse 1993), that a worker's post-injury wage should be based upon the ability to earn wages, rather than the actual earnings, when the worker failed to make a good faith effort to find appropriate employment after recovering from the work-related accident.

> If a finding is made that a good faith effort has not been made, the factfinder *[sic]* will have to determine an appropriate post-injury wage based on all the evidence before it, including expert testimony concerning the capacity to earn wages. . . .[8]

A literal reading of K.S.A. 44-510e would indicate claimant is entitled to receive a permanent partial general disability based upon her wage loss and her task loss. That statute provides, in part:

> The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning

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[4] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[5] K.S.A. 44-501(a).

[6] *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995).

[7] *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

[8] *Id.* at 320.

> after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

But the appellate courts have not always followed the literal language of the statute. Instead, the courts have, on occasion, added additional benchmarks for injured workers to satisfy before they become entitled to receive permanent disability benefits in excess of the functional impairment rating. For example, *Foulk*[9] and *Copeland*[10] held that workers must make a good faith effort to work or to find appropriate employment after their injuries before they are entitled to receive a work disability under K.S.A. 44-510e. And if the injured worker fails to prove good faith to find appropriate work, a post-injury wage must be imputed.

Assuredly, the concepts of good faith effort and imputing wages are neither mentioned in K.S.A. 44-510e or any other statute in the Act.

In *Ramirez*[11], the Kansas Court of Appeals again departed from the literal language of K.S.A. 44-510e and held a worker who had injured his upper extremities was not entitled to a work disability because the worker had failed to disclose an earlier back injury in a pre-employment application. But the Act contains no provision that an incomplete or erroneous pre-employment application precludes an award of work disability. Indeed, the injured worker in *Ramirez* probably felt the court's holding was especially punitive as the injury that was not disclosed in the pre-employment application was not related in any manner to the injury he later sustained.

And in *Mahan*[12], the Kansas Court of Appeals held that when an employee has failed to make a good faith effort to retain his or her current employment, *any* showing of the potential for accommodated work at the same or similar wage rate precludes an award for work disability.

> We hold that where the employee has failed to make a good faith effort to retain his or her current employment, a showing of the *potential* for accommodation at the

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[9] *Foulk, supra.*

[10] *Copeland, supra.*

[11] *Ramirez v. Excel Corp.*, 26 Kan. App. 2d 139, 979 P.2d 1261, *rev. denied* 267 Kan. 889 (1999).

[12] *Mahan v. Clarkson Constr. Co.*, 36 Kan. App. 2d 317, 138 P.3d 790, *rev. denied* 282 Kan. ___ (2006).

> same or similar wage rate precludes an award for work disability. It would be unfair under circumstances where the employee has refused to make himself or herself eligible for reemployment to require the employer to show that the employee was specifically *offered* accommodated employment at the same or similar wage rate.[13]

Again, the Act contains no such provision that failing to make a good faith effort to retain employment is a valid defense to a claim for disability benefits. Indeed, in *Oliver*[14] the Kansas Court of Appeals held that neither K.S.A. 1998 Supp. 44-510e(a) nor Kansas case law required an injured worker to always seek post-injury accommodated work from his or her employer before seeking work elsewhere. And in *Rash*[15], the Kansas Court of Appeals held the offering or accepting of accommodated employment was simply another factor in determining whether the employee had engaged in a good faith effort to seek appropriate employment.

> Heartland would have us punish employees with a harsher result for not accepting accommodated employment. This argument is contrary to *Oliver*. The lesson from *Oliver* is that an employer is not required to offer accommodated employment. Equally, an employee is not required to accept an offer of accommodated employment from his or her employer. ***The offering or accepting of accommodated employment is simply another factor in determining whether the employee has engaged in a good faith effort to seek appropriate employment.*** An employee who rejects an offer of accommodated employment has a good faith duty to seek appropriate employment within his or her restrictions. If the employee fails in this effort, "the factfinder *[sic]* will have to determine an appropriate post-injury wage based on all the evidence before it, including expert testimony concerning the capacity to earn wages." *Copeland*, 24 Kan. App. 2d at 320.[16] (Emphasis added)

The Kansas Supreme Court, however, has recently sent two strong signals that the Act should be applied as written. In *Graham*[17], the Kansas Supreme Court rejected an interpretation of the wage loss prong in the work disability formula that did not comport with the literal reading of K.S.A. 44-510e. The Kansas Supreme Court wrote, in part:

> When a statute is plain and unambiguous, a court must give effect to its express language, rather than determine what the law should or should not be. The court

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[13] *Id.* at 321.

[14] *Oliver v. Boeing Co.*, 26 Kan. App. 2d 74, 977 P.2d 288, *rev. denied* 267 Kan. 889 (1999).

[15] *Rash v. Heartland Cement Co.*, 37 Kan. App. 2d 175, 154 P.3d 15 (2006).

[16] *Id.* at 185.

[17] *Graham v. Dokter Trucking Group*, 284 Kan. 547, 161 P.3d 695 (2007).

> will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statute's language is clear, there is no need to resort to statutory construction.[18]

Moreover, in *Casco*[19], the Kansas Supreme Court overturned 75 years of precedent on the basis that earlier decisions did not follow the literal language of the Act. The Court wrote:

> When construing statutes, we are required to give effect to the legislative intent if that intent can be ascertained. When a statute is plain and unambiguous, we must give effect to the legislature's intention as expressed, rather than determine what the law should or should not be. A statute should not be read to add that which is not contained in the language of the statute or to read out what, as a matter of ordinary language, is included in the statute.[20]

Despite the Kansas Supreme Court's clear signals to follow the literal language of the Act, it is not for this Board to substitute its judgment for that of the appellate courts. Consequently, the Board is compelled to follow the law set forth in *Ramirez*[21].

The fact that claimant suffered an accidental injury which arose out of and in the course of her employment with respondent is not in dispute. Additionally, the finding by the ALJ that claimant suffered a 15 percent permanent partial whole body disability on a functional basis is also not in dispute. What is in dispute is whether claimant should be entitled to an award in excess of the functional impairment. Is claimant entitled to a "work disability" under K.S.A. 44-510e? Respondent contends, relying on *Foulk*, that claimant's rejection of the job offer in January of 2006 justifies limiting claimant to her functional impairment. The job offered clearly would have paid claimant a wage comparable to that which she was earning on the date of accident. Additionally, respondent expressed a willingness to meet any restrictions placed on claimant by the treating physician. However, when considering an employee's rejection of an offer of accommodated work, the fact finder may weigh factors other than the physical demands of the offered work.[22]

In *Parsons*, the claimant, a secretary, developed bilateral carpal tunnel syndrome, which ultimately caused her to be unable to perform her job for the respondent. After

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[18] *Id.* at Syl. ¶ 3.

[19] *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494, *reh'g denied* (2007).

[20] *Id.* at Syl. ¶ 6.

[21] *Ramirez*, *supra*.

[22] *Parsons v. Seaboard Farms, Inc.*, 27 Kan. App. 2d 843, 9 P.3d 591 (2000).

Parsons was released with permanent restrictions, Seaboard Farms, Inc., the respondent, attempted to accommodate her with work near her home in Hugoton, Kansas, but was unable to do so. Instead, Seaboard offered Parsons a job as a night security guard at its plant in Guymon, Oklahoma, a distance of 40 to 45 miles from Hugoton. The job paid 90 percent of Parsons' previous wage. Even though her physician approved the work, Parsons rejected the offer. Parsons reasoned that she was not a big person and the security job, working at night, scared her. Additionally, it would require she put 90 miles per day on her older car and claimant would have to be on the road at night coming and going. The Court of Appeals, in affirming the Board, found that Parsons acted in good faith in rejecting the security guard position because it was "drastically different than the type of work she had done and the concerns she expressed about the job appear to be reasonable ones."[23]

In *Ford*,[24] the claimant sustained a back injury, which ultimately caused him to leave work, and accept TTD compensation, while receiving medical treatment. Even though Ford was paid TTD, he was unable to afford his current living arrangements and was forced to move from Marysville, Kansas, where he worked for Landoll Corporation, to Haddam, Kansas, a distance of approximately 60 miles. Ford's injury occurred on November 15, 1995. Landoll Corporation offered Ford accommodated work in April 1997. The Court, in adopting the analysis of the administrative law judge, found that Landoll Corporation took an unusual amount of time in offering accommodated employment to Ford. The Court went on to state,

> The ALJ's statement that Landoll could not "expect its injured employees to neglect their personal welfare and remain within walking distance of its plant on the hope that someday an offer of accommodated work will be made" clearly articulated the ALJ's view that Landoll had acted unreasonably in delaying an offer of accommodated work."[25]

Here, the offer of the accommodated job was not made until nearly two years after the February 2004 accident. Respondent did not even offer to meet the restrictions placed

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[23] *Id*. at 845.

[24] *Ford v. Landoll Corp.*, 28 Kan. App. 2d 1, 11 P.3d 59, *rev. denied* 269 Kan. 932 (2000),

[25] *Id*. at 5.

on claimant by Dr. Stein, the authorized treating physician, in May 2004, when claimant was given temporary restrictions to return to work.[26] Additionally, respondent was aware in January 2006 that claimant had relocated to Morland, Kansas, after her marriage. Also, it is questionable whether respondent was even intending to remain in business in Wichita at the time the offer was made. The Board finds the offer by respondent in January 2006 to be somewhat disingenuous. Claimant's award will not be limited to her functional impairment by that offer.

The Board, likewise, questions claimant's offer to return to work in June 2006. By that time, claimant was aware that Ms. Phillips had relocated to Telluride, Colorado, and had nothing available in Wichita, Kansas. The Board finds claimant's offer to be suspect, considering the timing. But the Board does note claimant's willingness to relocate outside the State of Kansas for appropriate employment, as claimant has sought employment in the Denver, Colorado area. The Board finds claimant's refusal of the offered job, after her release by Dr. Stein, was done in good faith and her award should not be limited to her functional impairment on that basis. Additionally, the Board finds claimant's attempts to locate an appropriate job constituted a good faith effort. Claimant's job market was limited, at best. The number of available jobs in her geographical area was limited, and claimant went outside the area to find employment. Even after finding the job with West Corporation, claimant continued her search in order to improve her income possibilities. The Board finds claimant has satisfied the good faith requirements of *Copeland*. Therefore, a wage will not be imputed to her and her award will not be limited to her functional impairment and the Award of the ALJ in this regard is reversed.

K.S.A. 44-510e requires that both the actual loss of wages and the loss of task performing ability be considered when awarding a work disability. As the only task loss opinion in this record is the 64.29 percent opinion of Dr. Fluter, the Board will adopt that opinion for purposes of this award. In considering the wage loss factor, the Board has already found claimant's actions to be in good faith following her release by Dr. Stein. Therefore, under K.S.A. 44-510e, claimant's actual wages will be used to calculate the award.

Claimant was paid TTD until her release by Dr. Stein on May 3, 2006. After her release by Dr. Stein on May 3, 2006, claimant sought work at several locations, and in several ways, but was unable to obtain work until December 15, 2006. Therefore, claimant suffered a 100 percent wage loss during this period of time, which, when averaged with the task loss of 64.29 percent, calculates to a permanent partial work disability of 82.15 percent through December 14, 2006. Beginning on December 15, 2006, while

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[26] Claimant testified that in April 2004, she was still working. In April 2004, claimant got married. She still worked for respondent at the time that she got married. (*See* R.H. Trans. at 12.) When claimant was given temporary restrictions in May 2004, and she was still living in Wichita, respondent did not offer her accommodated work. (*See* Claimant's Brief at 7.)

working for West Corporation, claimant has averaged earnings of $700.00 per month, which computes to a weekly wage of $161.54. This represents a wage loss of 74 percent when compared to the average weekly wage claimant was earning on the date of accident. This, when averaged with the task loss of 64.29 percent, calculates to a permanent partial work disability of 69.15 percent.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be modified to award claimant a permanent partial general work disability of 82.15 percent beginning May 3, 2006, and continuing through December 14, 2006, followed by a permanent partial general work disability of 69.15 percent beginning on December 15, 2006. Claimant displayed good faith in both refusing the offered job in January 2006, and in her job search after being released by Dr. Stein in May 2006. Therefore, the decision by the ALJ to limit claimant to her functional impairment pursuant to K.S.A. 44-510e is reversed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated September 27, 2007, should be, and is hereby, modified to award claimant a permanent partial general work disability of 82.15 percent beginning May 3, 2006, and continuing through December 14, 2006, followed by a permanent partial general work disability of 69.15 percent beginning December 15, 2006.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Kathy Lynn Gable, and against the respondent, Esprit de Fleur, and its insurance carrier, State Farm Fire & Casualty Company, for an accidental injury which occurred February 14, 2004, and based upon an average weekly wage of $622.50, for 87.43 weeks of temporary total disability compensation at the rate of $415.02 per week totaling $36,285.20, followed by 32.29 weeks at the rate of $415.02 per week totaling $13,401.00 for a 82.15 percent permanent partial general work disability, followed by permanent partial disability at the rate of $415.02 per week not to exceed a total award of $100,000.00 for a 69.15 percent permanent partial general work disability.

As of February 7, 2008, there is due and owing claimant 87.43 weeks of temporary total disability compensation at the rate of $415.02 per week totaling $36,285.20, followed by 92.29 weeks of permanent partial disability compensation at the rate of $415.02 per week in the sum of $38,302.20, for a total of $74,587.40, which is ordered paid in one lump

sum less any amounts previously paid. The remaining balance of $25,412.60 is to be paid at the rate of $415.02 per week, until fully paid or further order of the Director.

Claimant's contract of employment with her attorney is approved insofar as it does not contravene the provisions contained in K.S.A. 44-536.

IT IS SO ORDERED.

Dated this ____ day of February, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas M. Warner, Jr., Attorney for Claimant
Dallas L. Rakestraw, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge